IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
CRIMINAL APPEALLTE JURISDICTION.

CRIMINAL APPEAL NO. 899 OF 1998

The State of Maharashtra..... ....Appellants.

(Orig.Complt..)
V/s

Shankar Yallapa Khavale... .... Respondent.
(Orig.Accd.)

Mr.A. M. Shringarpure, APP for the State.

CORAM: V.G. PALSHIKAR
AND
R.C. CHAVAN, JJ.

22nd July, 2005.

ORAL JUDGMENT: (Per Palshikar, J.)

Being aggrieved by the judgment and order of acquittal passed by the learned Vth Additional Sessions Judge, Satara, in Sessions Case No.131 of 1996 on 1.3.1997 the State has preferred this appeal on the grounds mentioned in the memo of appeal as also verbally canvassed before us.

2. With the assistance of the learned Public Prosecutor we have scrutinized the entire evidence on record and reappreciated the same.

3. The prosecution case stated briefly is that the accused Shankar Yallapa was married to deceased Muktabai and four sons were born out of that wedlock. All were residing in zopadpatti near Aikya Press, Satara. According to the prosecution Shankar was addicted to liquor and whenever used to

return in the evening he used to beat Muktabai under the influence of alcohol. In the morning of 4.7.1996 at about 6.00 a.m. a person called Anna who was nephew of Muktabai came to the house of Sanjay and told him that Muktabai is expired. Sanjay made inquiries with the accused who gave evasive answer. Immediately body of Muktabai was sent for post mortem and it was revealed that the death was caused by strangulation. A complaint was lodged before the police who arrested the accused, investigated the crime and prosecuted the accused under section 320 of Indian Penal Code.

4. The prosecution examined seven witnesses to bring home its case and the learned trial Judge on appreciation of evidence on record came to the conclusion of acquittal which is impugned in this appeal by the State as mentioned above.

5. P.W.1-Vivek Chikane is panch witness who proved seizure of sari border from the house of the accused. It is the contention of the prosecution that this sari border was used for strangulating the victim. P.W.2-Sanjay Jadhav is brother of the deceased who lodged the complaint on the basis of which enquiry was commenced. He is not an eye witness nor was he having any knowledge except the fact that there used to be quarrels between the accused and the victim.

6. P.W.3 is Dr.Vilasrao Salunkhe who conducted the post mortem and has proved that the death was caused by strangulation thus proving homicidal death of Muktabai. P.W.4-Draupada Jadhav is the mother of the victim who also is not an eye witness and but repeats the allegation regarding quarrel between the victim and the accused. To the same effect is the evidence of

P.W.5-Sinamma Gaikwad who is relation of the victim. The prosecution thus has established that there used to be quarrels between the accused and the victim.

7. P.W.6-Amrutrao Wakade is police constable who noted the information regarding death of victim. P.W.7-Krishna Magdum is the investigating officer. It will thus be seen that the entire evidence is what we have stated above. Even if the entire evidence is accepted what is proved by the prosecution is that : (i) homicidal death of Mukatabai; (ii) that the death was caused by strangulation; (iii) the accused was last together with the victim on the previous night of 3/4th July, 1996 and (iv) that there were frequent quarrels between the accused and the victim.

8. It has come on record that the accused was sleeping outside when queries were made by P.W.2-Sanjay with the accused. The fact that all of them were residing in zopadpatti is not disputed, that there were several other residents. Therefore even if the entire prosecution evidence is accepted it does not prove any connection between the accused and the homicidal death of Muktabai. Merely because they were quarreling couple and accused being under the influence of liquor it cannot be said that he is the person who committed the murder of Muktabai. Apart from the fact that there is no eye witness even the evidence as it stands is grossly inadequate to complete the chain of circumstances which can be relied upon in coming to the conclusion of guilt. The learned trial Judge there is right in acquitting the accused and his findings are properly recorded. He has marshaled the evidence correctly. In our opinion, therefore no interference is called for. In

the result therefore the appeal fails and is dismissed.